

DON C. BELL II, Trustee

IBLA 78-612

Decided July 25, 1979

79-47

79-59

79-68

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas offers which were unaccompanied by evidence of qualifications, W 64714 et al.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases:
Applications: Drawings -- Oil and Gas Leases: First Qualified
Applicant

An oil and gas lease may be awarded to the first qualified applicant only. The regulations governing qualifications are mandatory, and strict compliance therewith is required.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases:
Applications: Drawings -- Oil and Gas Leases: First Qualified
Applicant

A defective drawing card offer for an oil and gas lease is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third drawn qualified offerors have intervened. Where appellant's offer was third drawn and eventually accorded priority and then ultimately disqualified, the parcel described therein must be included in a subsequent list of lands available for simultaneous filing.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases:
Applications: Generally -- Oil and Gas Leases: Applications:
Filing

An offeror for oil and gas lease may withdraw his offer at any time prior to the drawing. However, the filing fee is retained as a service charge irrespective of the outcome of the drawing.

APPEARANCES: Don C. Bell II, Trustee for the John H. Trigg Co., pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Don C. Bell II, Trustee, 1/ appeals the several decisions of the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas offers 2/ for failure to furnish evidence of qualifications required of trustees.

In all instances the face of the drawing entry card is completed in appellant's name with the designation "Trustee." All the entry cards are signed "Don C. Bell, II," a number of which also bear the rubber-stamped statement "Don C. Bell, II, Trustee for the John H. Trigg Company."

1/ By order of the United States District Court for the District of New Mexico filed June 10, 1977, appellant, the debtors in possession, and a fourth individual were appointed co-trustees in bankruptcy for the John H. Trigg Company. That order, a copy of which is included in the record, empowers appellant to "negotiate and enter into any kind of agreements and/or sales arrangements in regard to the personal and/or real property of the debtors * * *."

2/ By decisions dated August 28, 1978, the following offers docketed IBLA 78-612 were rejected as indicated: W 64800 (parcel Wy-90); W 64866 (parcel Wy-157); and W 64898 (parcel Wy-189), all first drawn in the July 1978 drawing. By decisions dated October 24, 1978, the following offers docketed IBLA 79-47 were rejected as indicated: W 64714 (parcel Wy-4), second drawn in the July 1978 drawing; W 64768 (parcel Wy-58), third drawn in the July 1978 drawing; W 65196 (parcel Wy-1678), second drawn in the August 1978 drawing. By decisions dated October 10, 1978, the following offers docketed IBLA 79-59 were rejected as stated: W 65134 (parcel Wy-0420); W 65150 (parcel Wy-0733); W 65206 (parcel Wy-1856), all first drawn in the August 1978 drawing. By decision dated November 3, 1978, offer W 64718 (parcel Wy-8), which was drawn third in the July 1978 drawing was rejected. As the identical issue is presented in each case, we have consolidated these matters.

The Wyoming State Office rejected all the offers on the ground that appellant had failed to accompany said offers with a statement of his qualifications or, alternatively, to state on the entry card the reference by serial number as to where such statement had previously been filed. Material regulations, 43 CFR Subpart 3102, state the following:

43 CFR § 3102.5 Guardian or trustee.

§ 3102.5-1 Statements.

If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statements as to citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

43 CFR § 3102.5-2 Evidence previously filed.

Where evidence of the authority to act as a guardian, trustee, an executor or administrator, or where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

We observe that appellant attempted to file documents showing his qualifications with the Director, BLM, in Washington, D.C., in August 1978. By letter dated September 14, 1978, those documents were returned with instructions to file them in the State Office in which offers were to be submitted. Those instructions were correct.

We accept as true appellant's assertion that he exercised diligence in trying to ascertain the proper form of signature as trustee for the John H. Trigg Co. In this regard, appellant states: "The basis of my appeal is, therefore, that I followed in good faith the various and conflicting procedures I was advised to use by my counsel and by BLM employees, and that no concealment of any nature was intended."

The quoted statement indicates some misapprehension on the part of appellant. The decisions to reject the subject offers are based

solely on the failure to furnish, at the time the offers were filed, evidence of appellant's qualifications and authority as trustee. It is true that several decisions mention the form of signature appellant employed on particular offers, but only as a record of the factual predicate which triggered the applicability of the regulations, supra.

[1] Appellant's statement also suggests that subjective factors can or should mitigate a failure to comply with the disclosure regulations. That proposition is incorrect. An oil and gas lease may be awarded to the first qualified offeror only. 30 U.S.C. § 226(c) (1976). The regulations governing qualifications of offerors in the simultaneous leasing procedure are mandatory, and strict compliance therewith is required. See, e.g., University of the Trees, 40 IBLA 74 (1979) (corporate qualifications); Bill Lewis, 37 IBLA 230 (1978) (qualifications of other interested parties); Norcross Partners, 31 IBLA 181 (1977) (partnership qualifications); William Sparks, 27 IBLA 330, 83 I.D. 538 (1976) (qualifications of attorney-in-fact); Lyle Quintana Johnson, 1 IBLA 245 (1971) (qualifications of trustees). Appellant's offers were therefore properly rejected.

[2] We point out that the fact that appellant has now submitted evidence of his qualifications can be of no consequence to our decision. The defect is not curable after the drawing by submission of the required evidence of qualifications, for the reason that the rights of the second and third drawn qualified offerors have intervened. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd per curiam, 544 F.2d 1067 (10th Cir. 1976). With regard to those cases in which appellant's offer was third drawn and eventually accorded priority and then ultimately disqualified, the parcels described therein "shall be included in a subsequent list of lands available for filing * * *." 43 CFR 3112.5-1.

The record contains evidence that appellant withdrew or attempted to withdraw at least one pending offer, and requested return of the filing fee therefor. That request was denied by the Wyoming Office. Appellant therefore "question[s] the equity in accepting the [drawing entry] fees if the filings were unacceptable."

[3] We reject that argument. An offeror may withdraw his offer at any time prior to the drawing. 43 CFR 3110.1-4(b). In all cases, however, the filing fee is retained as a service charge, irrespective of the outcome of the drawing. 43 CFR 3103.1-3, 3103.2-1(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

